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No. 85-982

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

JACOB SAMPSON,

Petitioner,

v.

FRED B. RASKIN, MYRON A. BERGER & JOHN M. BARNES,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the decision of the United States District Court for the Northern District of Illinois that the Petitioner failed to state any federal cause of action against the Respondent, and the affirmation of that decision by the United States Court of Appeals for the Seventh Circuit, decided important questions of federal law which have not been settled by this Court, decided federal questions in conflict with decisions of this Court and other Federal Courts, or otherwise rendered opinions which should be reviewed by this Court.

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	iii
SUMMARY OF ARGUMENT	1
ARGUMENT	3
CONCLUSION	7

TABLE OF AUTHORITIES

	PAGE
42 U.S.C. §1981	3
42 U.S.C. §1985	2, 3, 4, 5, 6, 7

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SUMMARY OF ARGUMENT

The Petitioner, in his Petition for Writ of Certiorari, sets forth several questions to be presented for review. Those questions purportedly establish the considerations upon which the Petitioner would have this Court rely in determining whether or not to grant the Petition for Writ of Certiorari.

The questions presented, however, do not accurately set forth the issues delineated by the rulings of the District and Appellate Courts. Each of the issues put before this Court by the Petitioner relates to whether or not immigrants or persons of the Jewish faith can be deemed a class against which an

invidiously discriminatory animus, required as an element of a cause of action under 42 U.S.C. § 1985, can be directed.

The orders of the District and Appellate Courts, however, do not decide whether immigrants or persons of the Jewish faith can or cannot be the targets of such a class based, invidiously discriminatory animus on the part of alleged conspirators. Indeed, the opinions of the lower Court even suggest that those of the Jewish faith could very well be a class open to invidious discrimination. Rather, the District Court for the Northern District of Illinois and the Appellate Court for the Seventh Circuit dismissed the Petitioner's Complaint at Law, as amended, for failure to state a cause of action upon which any relief could be granted. In particular, the Petitioner's Amended Complaint at Law was dismissed because facts sufficient to set forth the appropriate conspiracy, and acts in furtherance of that conspiracy, were not pleaded.

There exists no basis for the issuance of a Writ of Certiorari. The opinions of the District Court for the Northern District of Illinois and the Appellate Court for the Seventh Circuit are not in conflict with decisions made by other federal and state courts in similar matters. Neither have the lower courts decided any questions which have not been, but should be, addressed by this Court. There is no sound basis for granting a Writ of Certiorari and the Petitioner's Petition should be denied.

ARGUMENT

The Petitioner, JACOB SAMPSON, filed his Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit on or about October 17, 1985. On November 11, 1985, this Respondent was served with a second Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit. The latter Petition purports to be an amended version of the Petition which was filed in October of 1985. A third Petition was served on or about November 25, 1985. All seek review of the same rulings, to wit: the Memorandum Opinion of the United States District Court for the Northern District of Illinois (Petition Appendix 1a-12a) and the Order of the United States Court of Appeals for the Seventh Circuit entered on June 4, 1985 (Petition Appendix 13a-23a).

In his Petition, the Petitioner has represented to this Court that the decision of the District Court for the Northern District of Illinois dismissing his First Amended Complaint at Law, without leave to amend, and the decision of the United States Court of Appeals for the Seventh Circuit affirming the decision of the District Court, are in conflict with the decisions of other federal courts and raise questions which should be considered by this Court.

Each of the questions presented by the Petitioner for the review of this Court relates to the classification of immigrants or persons of the Jewish faith as groups of people against whom class based, invidiously discriminatory activity can be directed. Specifically, the Petitioner questions whether either 42 U.S.C. § 1981 or 42 U.S.C. § 1985 protects persons of the Jewish faith; whether 42 U.S.C. § 1985 protects immigrants; and whether individuals who are not members of a class protected under 42 U.S.C. § 1985 can bring a suit for damages under that section. SEE PETITION 85-982, p.i.

A review of the orders in question (Petition Appendix 1a-23a), however, will show that the Petitioner's Amended Com-

plaint at Law was not dismissed because immigrants, those of the Jewish faith, or other classes of persons are not suspect classes under 42 U.S.C. 1985, but that it was dismissed for failure to otherwise state a cause of action, and, in particular, for failure to properly allege a conspiracy (Petition Appendix 5a); for failure to allege the existence of a class based, invidious animus (Petition Appendix 7a); for failure to allege any relationship between the alleged actions of the defendants and a class based, invidious discrimination, (Petition Appendix 8a); for failure of the Petitioner to demonstrate any conspiracy to deprive him of his rights under the law (Petition Appendix 9a); and for failure to allege any facts which would provide any basis for his allegations of the existence of a conspiracy (Petition Appendix 17a).

The United States District Court for the Northern District of Illinois dismissed the plaintiff's Amended Complaint at Law on or about March 30, 1984. Leave to amend was denied. As stated in the opinion of the District Court, the Amended Complaint at Law of the Petitioner was read very liberally (Petition Appendix 3a). That liberal reading of the Petitioner's Amended Complaint at Law led the District Court to the conclusion that the Petitioner was bringing his suit under either 42 U.S.C. § 1985(2) or 42 U.S.C. § 1985(3) (Petition Appendix 3a). The District Court then proceeded to discuss the sufficiency of the Petitioner's allegations of conspiracy.

According to the District Court, a bare allegation of conspiracy, unsupported by factual allegations, was insufficient to state a cause of action under 42 U.S.C. § 1985 (Petition Appendix 5a). The Petitioner's allegations of conspiracy were found to be sweeping and vague. However, given the liberal reading of those allegations required in the case of a *pro se* plaintiff, the Court held that the allegations sufficiently apprised the defendants of the nature of the claim against them (Petition Appendix 6a). But the District Court went on to state that a cause of action under 42 U.S.C. § 1985 must be supported by allegations showing that the defendants conspired against the plaintiff because of his membership in a particular class (Peti-

tion Appendix 7a). Those allegations must set forth, with some specificity, facts indicating the existence of a class based, invidious animus (Petition Appendix 7a). The District Court then dismissed the Petitioner's Complaint because of his failure to allege and establish any class based, invidious animus at all (Petition Appendix 7a). It did not dismiss the Amended Complaint at Law because of the Petitioner's failure to qualify as a member of a class which was the target of a class based, invidious animus. Moreover, the District Court held that the Petitioner alleged no facts which would indicate that his status as either an immigrant, a person of the Jewish faith or a *pro se* plaintiff had any relationship, whatsoever, with the alleged actions of the defendants (Petition Appendix 8a).

In reviewing and affirming the decision of the District Court, the United States Court of Appeals for the Seventh Circuit noted that a required element of a cause of action under 42 U.S.C. § 1985(3) is the existence of a racial or class based, invidiously discriminatory animus behind the actions of the alleged conspirators (Petition Appendix 15a). The Circuit Court of Appeals then noted that persons of the Jewish faith may very well be a suspect class under 42 U.S.C. § 1985(3) (Petition Appendix 15a) but went on to hold that, regardless of the classification of persons of the Jewish faith as a suspect class under 42 U.S.C. § 1985(3), the Petitioner otherwise failed to state a cause of action (Petition Appendix 15a). Furthermore, they expressly declined to decide the issue of the classification of persons of the Jewish faith as a suspect class (Petition Appendix 15a).

More particularly, the Circuit Court of Appeals held that a Plaintiff is required to show that the conduct of alleged conspirators was motivated by the conspirators hostility toward the suspect class (Petition Appendix 15a). A conspiracy affecting only the plaintiff, as an individual, is not sufficient under 42 U.S.C. § 1985 (Petition Appendix 16a). The Petitioner, however, did not allege any facts which showed that he was injured as a result of his membership in a suspect class (Petition

Appendix 16a). The alleged conspiracy of the defendants affected the Petitioner only as an individual.

Lastly, the Court of Appeals noted that the Petitioner's Amended Complaint did not allege any facts in support of his allegation of a conspiracy against him (Petition Appendix 16a). Some specific facts would be required to show the existence of a conspiracy. According to the Circuit Court of Appeals, the Petitioner's conclusory allegations did not allege the facts upon which a 42 U.S.C. § 1985(3) conspiracy could be based (Petition Appendix 17a). The District's Court dismissal of the Petitioner's Amended Complaint was, therefore, affirmed. A rehearing before the United States Court of Appeals for the Seventh Circuit was denied on July 1, 1985 (Petition Appendix 23a).

CONCLUSION

The orders entered by the United States District Court for the Northern District of Illinois and the United States Court of Appeals for the Seventh Circuit are clear and explicit in their holdings. The Petitioner's Amended Complaint at Law was dismissed for failure to allege, with even minimal specificity, any facts which could support a cause of action under 42 U.S.C. § 1985(3) or, as stated by the District Court, under any other federal statutes (Petition Appendix 9a). Specifically, the orders of the District Court and the Circuit Court indicate that the Petitioner failed to properly allege any conspiracy, whatsoever, on the part of the defendants; failed to allege the requisite class based, invidious animus on the part of the defendant; failed to allege that any actions of the defendants were motivated by the Petitioner's membership in any particular class; and failed to allege and show that he was injured as a result of his association with any potential suspect class. Neither the District Court for the Northern District of Illinois nor the Court of Appeals for the Seventh Circuit made any ruling with regard to the classification of immigrants, persons of the Jewish faith or *pro se* plaintiffs as suspect classes for the purpose of bringing an action under 42 U.S.C. § 1985. In fact, both the District Court and the Circuit Court avoided ruling on that issue and expressly dismissed the Petitioner's Amended Complaint on other grounds (Petition Appendix 9a, 11a, 15a).

The issues decided by the District Court for the Northern District of Illinois and the Court of Appeals for the Seventh Circuit in dismissing the Petitioner's Amended Complaint at Law are not in conflict with other federal courts. Neither do they decide any issues which have not been previously decided by this Court. The only questions presented for review by the Petitioner are questions which were not decided by either the District Court for the Northern District of Illinois or the Court of Appeals for the Seventh Circuit in their dismissal of the Petitioner's Amended Complaint at Law. It was not necessary

to resolve those questions prior to ruling that the Petitioner failed to state a cause of action. The Petitioner's Amended Complaint at Law was dismissed on other grounds. The Petitioner has not presented any support or basis for his Petition for a Writ of Certiorari and this Court should, therefore, exercise its discretion and deny the Petitioner's Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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